

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-6468

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

MAXINE ANGELA CHONG, a/k/a Tamika Lambert,
a/k/a Maxine Chung,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge. (CR-00-181-BR; CA-03-485-5-BR)

Submitted: July 28, 2004

Decided: August 18, 2004

Before WIDENER and WILLIAMS, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Maxine Angela Chong, Appellant Pro Se. Rudolf A. Renfer, Jr., Assistant United States Attorney, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Maxine Angela Chong seeks to appeal the district court's judgment denying relief on her 28 U.S.C. § 2255 (2000) motion. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

When the United States is a party, the notice of appeal must be filed no more than sixty days after the entry of the district court's final judgment, Fed. R. App. P. 4(a)(1)(B), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is mandatory and jurisdictional. See Browder v. Director, Dep't. of Corr., 434 U.S. 257, 267 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). A prisoner's notice of appeal is deemed filed when submitted to prison officials for mailing in accordance with Houston v. Lack, 487 U.S. 266 (1988). However, the prisoner must comply with Fed. R. App. P. 4(c)(1) and 28 U.S.C. § 1746 (2000) to benefit from this mailbox rule.

The district court's final judgment in this case was entered on November 26, 2003. Chong's notice of appeal was filed by the district court on February 2, 2004, beyond the sixty-day appeal period.* Because Chong failed to file a timely notice of appeal or move to obtain an extension or reopening of the appeal

*Because Chong's notice of appeal did not comply with Fed. R. App. P. 4(c)(1) and 28 U.S.C. § 1746 (2000), we find she is not entitled to the benefit of the mailbox rule.

period, we dismiss the appeal for lack of jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED